

or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

(iv) Other relevant experience.

(4) *Safe Harbor.* (i) A person who is determined to be an audit committee financial expert will not be deemed an *expert* for any purpose, including without limitation for purposes of section 11 of the Securities Act of 1933 (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this Item 401.

(ii) The designation or identification of a person as an audit committee financial expert pursuant to this Item 401 does not impose on such person any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification.

(iii) The designation or identification of a person as an audit committee financial expert pursuant to this Item 401 does not affect the duties, obligations or liability of any other member of the audit committee or board of directors.

Instructions to Item 401(e). 1. The small business issuer need not provide the disclosure required by this Item 401(e) in a proxy or information statement unless that small business issuer is electing to incorporate this information by reference from the proxy or information statement into its annual report pursuant to general instruction E(3) to Form 10-KSB.

2. If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (e)(3)(iv) of this Item, the small business issuer shall provide a brief listing of that person's relevant experience. Such disclosure may be made by reference to disclosures required under paragraph (a)(4) of this Item 401 (§ 229.401(a)(4) of this chapter).

3. In the case of a foreign private issuer with a two-tier board of directors, for purposes of this Item 401(e), the term *board of directors* means the supervisory or non-management board. Also, in the case of a foreign private issuer, the term *generally accepted accounting principles* in paragraph (e)(2)(i) of this Item means the body of generally accepted accounting principles used by that issuer in its primary financial statements filed with the Commission.

4. A small business issuer that is an Asset-Backed Issuer (as defined in § 240.13a-14(g) and § 240.15d-14(g) of this chapter) is not required to disclose the information required by this Item 401(e).

5. Following the effective date of the first registration statement filed under the Securities Act (15 U.S.C. 77a *et seq.*) or Securities Exchange Act (15 U.S.C. 78a *et seq.*) by a small business issuer, the small business issuer or successor issuer need not

make the disclosures required by this Item in its first annual report filed pursuant to Section 13(a) or 15(d) (15 U.S.C. 78m(a) or 78o(d)) of the Exchange Act after effectiveness.

3. Add § 228.406 to read as follows:

§ 228.406 (Item 406) Code of ethics.

(a) Disclose whether the small business issuer has adopted a code of ethics that applies to the small business issuer's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. If the small business issuer has not adopted such a code of ethics, explain why it has not done so.

(b) For purposes of this Item 406, the term *code of ethics* means written standards that are reasonably designed to deter wrongdoing and to promote:

(1) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a small business issuer files with, or submits to, the Commission and in other public communications made by the small business issuer;

(3) Compliance with applicable governmental laws, rules and regulations;

(4) The prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and

(5) Accountability for adherence to the code.

(c) The small business issuer must:

(1) File with the Commission a copy of its code of ethics that applies to the small business issuer's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, as an exhibit to its annual report;

(2) Post the text of such code of ethics on its Internet website and disclose, in its annual report, its Internet address and the fact that it has posted such code of ethics on its Internet website; or

(3) Undertake in its annual report filed with the Commission to provide to any person without charge, upon request, a copy of such code of ethics and explain the manner in which such request may be made.

(d) If the small business issuer intends to satisfy the disclosure requirement under Item 10 of Form 8-K regarding an amendment to, or a waiver from, a provision of its code of ethics that applies to the small business issuer's principal executive officer, principal

financial officer, principal accounting officer or controller, or persons performing similar functions and that relates to any element of the code of ethics definition enumerated in paragraph (b) of this Item by posting such information on its Internet website, disclose the small business issuer's Internet address and such intention.

Instructions to Item 406. 1. A small business issuer may have separate codes of ethics for different types of officers. Furthermore, a *code of ethics* within the meaning of paragraph (b) of this Item may be a portion of a broader document that addresses additional topics or that applies to more persons than those specified in paragraph (a). In satisfying the requirements of paragraph (c), a small business issuer need only file, post or provide the portions of a broader document that constitutes a *code of ethics* as defined in paragraph (b) and that apply to the persons specified in paragraph (a).

2. If a small business issuer elects to satisfy paragraph (c) of this Item by posting its code of ethics on its website pursuant to paragraph (c)(2), the code of ethics must remain accessible on its website for as long as the small business issuer remains subject to the requirements of this Item and chooses to comply with this Item by posting its code on its Web site pursuant to paragraph (c)(2).

3. A small business issuer that is an Asset-Backed Issuer (as defined in § 240.13a-14(g) and § 240.15d-14(g) of this chapter) is not required to disclose the information required by this Item.

4. Amend § 228.601 by:

a. Removing the "reserved" designation for exhibit (14) and adding "Code of ethics" in its place in the Exhibit Table;

b. Removing "N/A" corresponding to exhibit (14) under all captions in the Exhibit Table;

c. Adding an "X" corresponding to exhibit (14) under the caption "Exchange Act Forms", "8-K" and "10-KSB" in the Exhibit Table; and

d. Adding the text of paragraph (b)(14).

The revisions and additions read as follows:

§ 228.601 (Item 601) Exhibits.

* * * * *

(b) *Description of exhibits.* * * *

(14) *Code of ethics.* Any code of ethics, or amendment thereto, that is the subject of the disclosure required by Item 406 of Regulation S-B (§ 228.406) or Item 10 of Form 8-K (§ 249.308 of this chapter), to the extent that the small business issuer intends to satisfy the Item 406 or Item 10 requirements through filing of an exhibit.

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